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Supreme Court, U.S.
FILED

931957 MAY 31 1994

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1994

CHARLES E. DILLON, SR., Pro Se
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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44 pp

THE QUESTIONS PRESENTED FOR REVIEW

1. Is a retired employee of a company with a tax-qualified pension plan who was hurt by the discriminatory application of the plan entitled to the equal protection of the law--i.e., the same government-assisted remedy that is afforded all others who are affected by the plan: a declaratory judgment action under 26 U.S.C. 7476?

2. Can an administrative organ of the United States narrow the scope of remedy and jurisdiction provided by federal statute by redefining and qualifying a single word in the statute when it promulgates regulations for the statute?

LIST OF ALL PARTIES TO THE PROCEEDING

The parties to the proceedings below were the petitioner, Charles E. Dillon, Sr., a retired employee of Kraft Foods, and the Commissioner of Internal Revenue of the United States.1.

1. Petitioner moved that the employer and pension administrator, Kraft General Foods, be made a party to the original proceeding in the Tax Court of the United States, but the motion was not granted.

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In the Supreme Court of the United States

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CHARLES E. DILLON, SR., Pro Se,
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Charles E. Dillon, Sr., requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this action on January 28, 1994.

OPINIONS BELOW

The opinion of the Court of Appeals is unreported but recorded as an unreported opinion at 16 F.3d No. 2, 1227. The

opinion and order of the court and the order denying rehearing en banc appears in the appendix.

The opinion of the United States Tax Court is reported at 1993 RIA T.C. Memo, 93-1183, and appears in the appendix.

JURISDICTION

The opinion of the Court of Appeals was entered on January 28, 1994. A timely petition for rehearing with a petition for rehearing en banc was denied March 2, 1994. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS

Statutes

Internal Revenue Code of 1986, as amended ("I.R.C.")

Section 401(a): Requirements for qualification. A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-

sharing plan of an employer for the exclusive benefit of his employes or their beneficiaries shall constitute a qualified trust under this section--

* * *

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).* * *

Section 7476 **Declaratory judgments relating to qualification of certain retirement plans.**

(a) **Creation of remedy.** In a case of actual controversy involving--

(1) a determination by the Secretary with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

(2) a failure by the Secretary to make a determination with respect to-

(A) such initial qualification, or

(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to such initial qualification or continuing qualification.

Any such declaration shall have the force and effect of a decision of the Tax Court, and shall be renewable as such. For purposes of this section, a determination with respect to a continuing qualification includes

any revocation of or other change in qualification.

(b) **Limitations.**

(1) Petitioner. A pleading may be filed under this section only b a petitioner who is the employer, the plan administrator, an employe who has qualified under regulation prescribed by the Secretary as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Servic or the Pension Benefit Guaranty Corporation.

Revenue Procedure 923-4, 1993-1 I.R.B. 88 (January 4, 1993):

> A "determination letter" is a written statement issued by a Key District Director that applies the principles and precedents previousl announced by the National Office to specific set of facts. It is issued only when a determination can be ma based on clearly established rules the statute, a tax treaty, or the regulations, or on a conclusion in revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the questions presented.

Treasury Regulations on Income Tax (1954 Code)

Section 1.74767-1

(b) **Interested parties--(1) In general.** If paragraphs (b)(2)(3),

(S4), and (5) of this section do not apply, then, except as otherwise provided in paragraphs (b)(6)(i), (ii), and (iii) of this section, the following persons shall be interested parties with respect to an application for an advance determination as to the qualified status of a retirement plan:

(i) All present employees of the employer who are eligible to participate in the plan (as defined in paragraph (d)(2) of this section, and

(ii) All other present employees of the employer whose principal employment (as defined in paragraph (d)(3) of this section) is the same as the principal place of employment of any employee described in paragraph (b)(1)(i) of this section.

Revenue Ruling 85-59, 1985-1 Cum. Bull. 135 (superseding Revenue Ruling 71-296, 1971-2 Cum. Bull. 202):

Section 401(a)(4) of the Code provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders, or highly compensated (the prohibited group). Section 1.401-1(b)(3) of the Income Tax Regulations provides that a plan is not for the exclusive benefit of employees in general if, by any device whatever, it discriminates either in eligibility requirements, contributions, or benefits in favor

of the prohibited group.

Revenue Ruling 71-296, 1971-2 Cum. Bull. 202:

> Discretion may be provided for in a profit-sharing plan permitting the trustee to determine whether lump-su or periodic distributions are to be made in particular cases. The amounts distributable must be fully vested in the employee and, if periodic distributions are to be mad to some as against lump-sum payments to others, the distributions must reflect the actual increments and losses on the participant's account. Accordingly, it is held that this profit-sharing plan does not result in the discrimination prohibited by Section 401(a)(4) of the Code merely because it grants discretion to the trustees to determine the option under which distributions are to be made.

STATEMENT OF THE CASE

Petitioner Charles E. Dillon, Sr., a warehouse superintendent for Kraft Foods and a 31-year employee of the company, accepted the company's offer in 1984 of a early-retirement incentive, a supplement to offset the Social Security reduction

that arises from early retirement. He asked for a lump-sum benefit, but company officials said no such option was available to Kraft employees. After accepting but before the actual retirement date, petitioner learned that the company indeed offered a lump-sum retirement -- to those with annual pensions exceeding $27,000, not to those in his income class. He protested that the Employee Retirement Income Security Act of 1974 (ERISA) prohibited discrimination in pension benefits in favor of highly compensated employees. Kraft then amended its employee pension plan to offer the lump-sum option to all, but made it effective on November 1, 1984, a few days after the date of petitioner's retirement. Dillon pressed his claim for a lump-sum benefit, pleading to the United States Department of Labor and to the Internal Revenue

Service, to no avail. The IRS said that as of the date of his retirement, an IRS revenue ruling recognized a differentiation in benefit options between high-and low-salaried people as somehow not being violative of ERISA's prohibition against discrimination in benefit plans between income classes. Subsequently, the IRS changed its interpretation of ERISA to prohibit such differentiation, but it maintained that this did not affect Dillon because the older, though perhaps defective, interpretation had been operative at the moment of his retirement.

In 1986, after he had filed a lawsuit, Kraft suspended his monthly benefit. After several months, the company proposed a settlement of a lump sum, which he accepted. But the company deducted from the settlement check an amount equal to the aggregate of the early-retirement

incentives -- some $15,000 -- which meant that the company had withdrawn, after the fact, the early-retirement inducement.

The Proceedings Below. Acting pro se, Dillon brought an action in the United States Tax Court pursuant to section 7476(b)(1), which permits employees to petition the court for a declaratory judgment with respect to the IRS's determination, or non-determination, of the tax-qualified status of an employee pension plan. Section 401(a)(4) of the Code provides that a plan will not enjoy tax-qualified status unless there is no discrimination in contributions or benefits in favor of employees who are officers, shareholders, supervisors, or highly compensated. The respondent Commissioner of Internal Revenue filed a motion to dismiss the petition for a declaratory judgment for lack of

jurisdiction, maintaining that the petitioner was not an interested party qualified to seek a declaratory judgment under the Treasury regulations that implemented 7476(b)(1). The Tax Court, on May 27, 1993, entered a memorandum opinion granting the motion, and the case was dismissed for lack of jurisdiction on May 28. Petitioner appealed to the Court of Appeals of the Eighth Circuit, which on January 28, 1994, affirmed the Tax Court per curiam. Petitioner sought a rehearing en banc, which the Court of Appeals denied on March 2, 1994. The Court of Appeals, as did the court below, said negative letters sent to Dillon did not amount to formal determinations of the qualified status of Kraft's pension plan, which could have formed the grounds for an action in Tax Court for declaratory judgment, nor did Dillon even meet the

requirements for requesting a determination or for bringing a declaratory judgment action under 26 U.S.C, 7476(b)(1). Adopting the position of the IRS and the Tax Court, the Court of Appeals said only "present employees," not former employees, were entitled under Treasury regulations to request such determinations, citing Treas. Reg. 1.7476-1(b)(1).

REASONS FOR GRANTING THE WRIT

THE CASE RAISES THE IMPORTANT QUESTION OF WHETHER A RETIRED WORKER IS ENTITLED TO THE EQUAL PROTECTION OF AN ACT OF CONGRESS THAT UNDERGIRDS THE PENSION RIGHTS OF EMPLOYEES, OR WHETHER RETIRED PENSIONERS ARE IN AN UNPROTECTED CLASS.

The underlying legal issues are not in dispute. Congress intended to give employees and others affected by a company pension plan a remedy if their interests are harmed by the plan. Section 7476(a)

gives the Tax Court jurisdiction over a declaratory judgment action if there is an actual controversy involving a determination by the Secretary with respect to the initial or continuing qualification of a retirement plan, or involving a failure by the Secretary to make a determination with respect to such initial qualification or a continuing qualification if the controversy arises from an amendment or the termination of the plan. Loftus v. Commissioner, 90 T.C. 845, 855 (1988), affd. without published opinion 872 F.2nd 1021 (2nd Cir. 1989).

Section 7476(b)(1) provides that the employer, the plan administrator, the Pension Benefit Guaranty Corporation, or an employee who has qualified under regulations prescribed by the Secretary as an interested party can undertake a

declaratory judgment action. The problem came with the regulations. Section 1.7476-1(b)(1), Income Tax Regs., provides the general rule that all "present employees" qualify as interested parties. The statute provided the remedy for "employees." Except for cases involving a plan termination, former employees -- i.e., presumably, retired employees -- are not considered interested parties. The Tax Court cited Jones v. Commissioner, T.C. Memo. 1980-512; cf Hawes v. Commissioner, 73 T.C. 916, 919 n.4 (1980). Hawes, indeed, is a compelling citation. Hawes was a former employee who sought a declaratory judgment on the basis of amendments to the company pension plan, and, though he ultimately lost the case on other grounds, the IRS did not resist and he was allowed to bring the declaratory judgment action.

Leaving aside for the moment the question of whether Treasury exceeded its authority in adopting the limiting regulatory language, consider only the logic. Why should a person lose his/her remedy at the moment he or she is most likely to learn of the discriminatory application of a pension plan -- that is, upon retirement? That is what happened in the case of the petitioner.

The IRS asserted that its several responses to petitioner about the discriminatory application of the pension plan, against low-salaried employees who were there before November 1, 1984, were not letters of determination, which apply the applicable law to a specific set of facts, but merely "informational" and non-binding. See Rev. Proc. 93-4, 1993-1 I.R.B. 83, 87-88 (Jan. 4, 1993). Therefore, having no letter of

determination in hand, he did not meet the requirements for filing a declaratory judgment action. Section 7476 allows an action also if the IRS fails to make a determination on the initial qualification of the plan or on its continuation if the controversy arises from a plan amendment or plan termination. Loftus v. Commissioner, 90 T.C. 845, 855 (1988), affd. without published opinion 872 F.2d 1021 (2nd Cir. 1989). If the petitioner was barred from the declaratory judgment course for not having a determination letter on the initial qualification, the amendment to the plan that became effective a few days after his retirement and that froze him out of the lump-sum option certainly opened that avenue to him. The IRS asserted, and the Tax Court concurred, that the petitioner's complaint

had not been with the amended plan but with the original one. His grievance was with both, greater perhaps with the amended one because it extended the option but more narrowly froze him out. In the end, of course, it was under the amended plan that his contract right to the early-retirement payments was abrogated.

It is, in short, a fundamental question of justice affecting the pension rights of American workers that needs to be settled by the Supreme Court.

WHILE IT IS NOT A FIRST-IMPRESSION ISSUE, THE CASE RAISES THE VITAL QUESTION OF WHETHER AN ADMINISTRATIVE AGENCY EXCEEDS ITS PREROGATIVES WHEN ITS RULES SUBSTITUTE SPECIFICALLY LIMITING LANGUAGE FOR THAT OF THE STATUTE.

As aforementioned, the Treasury regulations substituted the words "present employees" for the word that appeared in the statute, "employees," thus sharply

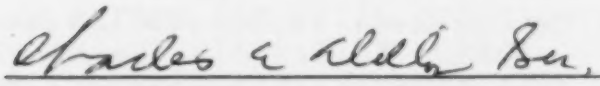
narrowing the remedy. "Employees" does not connote merely the instant status but an abiding relationship with the employer. Would an employee who was fired for the simple reason that the company wanted to avoid pension costs have a grievance that would not be justiciable because he/she was no longer a "present employee"? The substitution of the more limiting phrase must have a justification that is consonant with the purpose of the statute itself. The Treasury regulation that 8limited the declaratory judgment action to "present employees" indeed is legislative in character and has the force and effect of law only if it does not violate the statutory provisions, exceed the authority delegate to the rule-making body by the statute or is unreasonable and arbitrary in its application. (Commissioner v. South Texas Co., 333

U.S. 496, 503 [36 AFTR 604] [1948]. In adding the word "present," the IRS violated the statutory provision and unreasonably applied it, and the original and appellate courts were negligent in not affirming this principle. The Supreme Court should address this issue to provide guidance in future cases and restrain the legislative impulses of the bureaucracy.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,



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DATE: May 27, 1994

APPENDIX

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Order of the United States Tax Court.. 10a

United States Court of Appeals

for the Eighth Circuit

CHARLES E. DILLON SR., Appellant	)	
versus	)	No. 93-2822
COMMISSIONER OF INTERNAL REVENUE, Appellee	)	

APPEAL FROM THE UNITED STATES TAX COURT
[UNPUBLISHED]
No. 27268-92R

Submitted on the briefs:

Michael L. Paup, Acting Assistant Attorney General, Washington, D.C., Gary R. Allen, Gilbert S. Rothenberg and Marion E. M. Erickson, Attorneys, Tax Division, Department of Justice, Washington, D.C., for appellee.

Charles E. Dillon, Sr., North Little Rock, Ark., pro se, for appellant.

Before McMillian, Hansen, and Morris Sheppard Arnold, Circuit Judges.

Per Curiam.

Charles E. Dillon, Sr., appeals the decision of the United States Tax Court(1), dismissing for lack of jurisdiction Dillon's declaratory judgment action under 26 U.S.C. Section 7476. See Dillon v. Commissioner, 65 T.C.M. (CCH) 2816 (1993). For the reasons discussed below, we affirm the decision of the tax court.

Dillon retired from Kraft General Foods, Inc. (Kraft), in October 1984 as part of an early-retirement program, in which Kraft agreed to provide a social security supplement as an incentive. Kraft denied Dillon's request for a lump-sum payment of his retirement benefits because such payment was available only to higher-paid employees. Dillon protested the

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(1) The Honorable Peter J. Panuthos, Chief Special Trial Judge, United States Tax Court.

discriminatory treatment, and Kraft amended its employee pension plan to allow lump-sum payments to all employees effective November 1984, after Dillon's retirement. Dillon filed suit against Kraft in 1986, and the parties reached a settlement in which Kraft gave Dillon a lump-sum payment. Later, Dillon realized that the settlement excluded the social security supplement.

Dillon complained to the Internal Revenue Service (IRS) about Kraft's treatment with respect to the administration of the pension plan, and alleged that the plan was discriminatory in violation of the Employee Retirement Income Security Act of 1974 (ERISA). Several IRS officials responded to Dillon, giving him general information about qualified pension plans; each letter contained either a proviso that the

information was "not a ruling and may not be relied upon with respect to any specific transaction," or a statement that there was no action the IRS could pursue on Dillon's behalf.

In December 1992, Dillon filed a pro se petition for declaratory judgment in the tax court under Tax Court Rule 211(c)(4). Acknowledging that the correspondence he received from the IRS contained the caveat that the letters were not rulings, he nevertheless presumed the negative responses constituted a determination that his objections to the plan were without merit. Dillon asserted he satisfied the prerequisites to 26 U.S.C. Section 7476(b), and sought a declaration that the Kraft pension plan failed to meet the qualifications of the law and that he was entitled to the social security supplement.

The government moved to dismiss the actio for lack of jurisdiction, arguing that Dillon did not satisfy the requirements for bringing a declaratory judgment proceeding under 26 U.S.C. Section 7476.

After a hearing and consideration o Dillon's written statement submitted in accordance with Tax Court Rule 50(c), the tax court granted the government's motion The tax court concluded, under 26 U.S.C. Section 7476(a), that no determination ha been made regarding the tax-qualified status of the Kraft plan, that the letter were informational only and not rulings, and that this action did not relate to th failure to make a determination regarding initial or continuing qualification arising from a plan amendment or plan termination. In addition, the tax court held that Dillon did not have standing under 26 U.S.C. Section 7476(b)(1) to

bring this action, because he was not an interested party, as defined in Treas. Reg. Section 1.7476-1(b)(1) (present employees qualify as interested parties), and (5) (former employees qualify as interested parties in plan terminations). The tax court also denied Dillon's motion for reconsideration. This appeal followed.

For reversal, Dillon argues that the tax court erred in determining he was not an interested party and that the IRS never made a determination of Kraft's tax-qualified status.

Under 26 U.S.C. Section 7476, the tax court may decide only whether the Commissioner properly applied the law to the facts presented in the request for determination; thus, the tax court may determine only "'whether a plan is, or is not, a qualified plan.'" Wenzel v. Commissioner, 707 F.2d 694, 696 (2d Cir.

1983) (per curiam) (quoting legislativ history at S. Rep. No. 383, 93rd Cong. Sess. 3 (1974), reprinted in 1974 U.S.C.C.A.N. 4639, 4890, 4997).

We agree with the tax court that Commissioner's correspondence with Dil did not constitute a determination let with respect to the qualification of Kraft's plan. Determination letters, unlike information letters, apply the applicable law to a specific set of fa See Rev. Proc. 93-4, 1993-1 I.R.B. 83 87-88 (Jan. 4, 1993). Dillon also did comply with the requirements for requesting a determination letter. See at 93-100. Thus the Commissioner was n required to issue a determination lett and the failure to issue the determina letter did not give rise to an action declaratory judgment under 26 U.S.C. Section 7476(a).

Accordingly, we affirm the decision of the tax court.

United States Court of Appeals

for the Eighth Circuit

CHARLES E. DILLON, SR. Appellant	)	
versus	)	No. 93-2822
COMMISSIONER OF INTERNAL REVENUE, Appellee	)	

Order Denying Petition for Rehearing a Suggestion for Rehearing En Banc

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The suggestion for rehearing en b is denied. The petition for rehearing b the panel is also denied.

May 2, 1994

T.C. Memo 1993-239

United States Tax Court

CHARLES E. DILLON, SR., Petitioner	)	
versus	)	No. 27268-92R
COMMISSIONER OF INTERNAL REVENUE Respondent	)	

Submitted on the briefs:

David L. Jordan, Acting Chief Counsel, Internal Revenue Service, Washington, D.C.; Mary E. Oppenheimer, Assistant Chief Counsel; Mary E. Oppenheimer, Assistant Chief Counsel, Employee Benefits and Exempt Organizations; Thomas G. Schendt, Assistant Chief, Branch No. 7, Office of the Associate General Counsel (Employee Benefits and Exempt Organizations, Washington, D.C.; Don M. Parkinson, Attorney, Chicago, Ill., for Respondent.

Charles E. Dillon, Sr., North Little Rock, Ark., Pro Se, for the Petitioner.

MEMORANDUM OPINION

PANUTHOS, Chief Special Trial Judge:

This matter is before the Court on respondent's motion to dismiss for lack of jurisdiction filed February 1, 1993. The

issue for decision is whether the prerequisites to this Court's jurisdiction under section 7476 have been satisfied.(1)

Background

On or about October 1, 1984, Charles E. Dillon, Sr., (petitioner), retired from employment with Kraft, Inc. (Kraft), under an "early out" program. During discussions leading to his decision to retire, petitioner inquired and was advised by Kraft that he was not entitled to receive his retirement benefits in a lump-sum payment. However, other Kraft employees were permitted to elect to receive their benefits in a lump-sum. Effective November 1, 1984, Kraft amended its pension plan to make lump-sum distributions available to all participants of the plan.

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(1) All section references are to the Internal Revenue Code unless otherwise noted. All rule references are to the Tax Court Rules of Practice and Procedure.

Subsequent to his retirement, petitioner became involved in a dispute with Kraft over his eligibility for a lump-sum distribution of his retirement benefits. The matter appeared to be settled in July 1986 when Kraft forwarded a check to petitioner in the amount of $63,770.06 representing a lump-sum payment of petitioner's retirement benefits. Sometime after the settlement was finalized, petitioner realized that the payment that he agreed to did not include an incentive amount (a social security supplement) that Kraft originally offered as an inducement to petitioner to subscribe to the early-out program.

Believing the Kraft retirement plan to be in violation of the antidiscrimination rules set out in section 401(a)(4), petitioner pursued the matter with Kraft, the U.S. Department of

Labor, and the Internal Revenue Service (IRS). The record includes six letters that petitioner received from the IRS (four letters from the National Office in Washington, D.C., and two letters from the office of the District Director in Chicago, Illinois) covering the period June 1987 to October 1992. Each of the letters originating in the National Office states that it is intended to convey general information only and is not intended to be treated as either a ruling or a determination as to the qualified status of a particular deferred compensation plan. While such language was not included in the two letters originating in the District Director's office, the letters plainly state that there is no action that the IRS can pursue on petitioner's behalf.

On December 9, 1992, petitioner

filed a petition for declaratory judgment pursuant to section 7476. Respondent subsequently filed a motion to dismiss for lack of jurisdiction to which petitioner filed an objection.

The matter was set for hearing in Washington, D.C. Counsel for respondent appeared at the hearing and presented argument on the motion. Petitioner filed a statement with the Court pursuant to Rule 50(c).

Discussion

Section 7476(a) provides that this Court may exercise jurisdiction over a declaratory judgment action if there is an actual controversy involving a determination by the Secretary with respect to the initial or continuing qualification of a retirement plan, or involving a failure by the Secretary to make a determination with respect to such

initial qualification or with respect to such continuing qualification if the controversy arises from a plan amendment or plan termination. Loftus v. Commissioner, 90 T.C. 845, 855 (1983), aff'd. without published opinion 872 F. 2d 1021 (2d Cir. 1989). Petitioner bears the burden of proving that the jurisdictional requirements of section 7476 have been met. Rule 217(c)(1)(A)(i); Halliburton Co. v. Commissioner, 98 T.C. 88, 94 (1992).

Section 7476(b)(1) provides in pertinent part that the petitioner in such a declaratory judgment action is limited to the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary as an interested party for purposes of pursuing administrative remedies within the IRS, or the Pension Benefit Guaranty

Corporation. New York State Teamsters v. Commissioner, 90 T.C. 862, 874 (1988), affd. without published opinion 872 F.2d 1021 (2d Cir. 1989). Section 1.7476-1(b)(1), Income Tax Regs., provides the general rule that all present employees of the employer qualify as interested parties. Except for cases involving a plan termination,(2) former employees generally are not considered interested parties under the controlling regulations. See Jones v. Commissioner, T. C. Memo. 1980-512; cf Hawes v. Commissioner, 73 T.C. 916, 919 n.4 (1980).

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(2) Sec. 1.7476-1(b)(5), Income Tax Regs., provides that, in the case of an application for an advance determination with respect to whether a plan termination affects the continuing qualification of a plan, all present and former employees with accrued benefits under the plan, as well as all beneficiaries of deceased former employees currently receiving benefits under the plan, shall be interested parties.

Petitioner alleges in his petition that he is uncertain whether respondent made a determination that the Kraft plan is qualified. Nonetheless, petitioner contends that he is an interested party and that he believes he has exhausted his administrative remedies.

Respondent denies making a determination with respect to the qualification of the Kraft plan. Respondent contends that the letters issued to petitioner were merely "informational letters" that do not provide a basis for jurisdiction under 7476.

Considering the record in its entirety, we are persuaded that the jurisdictional prerequisites set forth in section 7476(a) are lacking in the instan case. First, we agree with respondent that no determination has been made with

respect to the tax-qualified status of the Kraft plan. To the contrary, the letters issued to petitioner indicate that they were issued for informational purposes only and are not to be considered rulings.(3) Nor can it be said that this action relates to respondent's failure to make a determination with respect to initial or continuing qualification arising from a plan amendment or plan termination. While the Kraft plan was amended subsequent to petitioner's retirement, the plan amendment is not the source of petitioner's complaint. Rather, petitioner's dispute with Kraft relates solely to the amount of the settlement that petitioner negotiated with Kraft over his eligibility to receive a lump-sum distribution. We conclude that petitioner has failed to establish that the jurisdictional requirements of section

7476 are satisfied.

The foregoing aside, we further not that petitioner lacks standing to bring the instant action under either section 7476(b)(1) or the regulations promulgate pursuant to the authority provided therein. In particular, petitioner (a former employee of Kraft) does not quali as an interested party as defined in section 1.78476-1(b)(1), Income Tax Regs. which provides the general rule that all present employees of the employer qualif as interested parties. Similarly, petitioner does not qualify as an interested party under the exception set forth in section 1.7476-1(b)(5), Income Tax Regs., which applies in the case of plan termination. See Jones v. Commissioner, supra.

Accordingly, respondent's motion to dismiss for lack of jurisdiction filed

February 1, 1993, will be granted and this case will be dismissed for lack of jurisdiction.